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In the

Supreme Court of the United States

OCTOBER TERM, 1966

TIMOTHY D. KELLY, Administrator with the Will Annexed of the Estate of GEORGE H. SHANNON, Deceased, as Legatee and Devisee under the Last Will and Testament of GEORGE H. SHANNON, Deceased,

Petitioner,

vs.

EMMA CHABOT,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

TIMOTHY D. KELLY *Pro Se*
By DAVID S. MINOR
7 W. Madison Street
Chicago, Illinois
Attorney for Petitioner

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Petitioner, Timothy D. Kelly administrator with the Will Annexed of the Estate of George H. Shannon, Deceased, and Legatee and Devisee under the Last Will and Testament of George H. Shannon, Deceased, pray that a Writ of Certiorari issue to the Supreme Court of the State of Illinois to review the decision of that Court which affirmed the Decree of the Superior Court of Cook County, Illinois.

The Decree in favor of Emma Chabot, plaintiff, against Timothy D. Kelly, administrator with the Will annexed of the estate of George H. Shannon, Deceased, as Legatee and Devisee under the Last Will and Testament of George H. Shannon, Deceased, defendant. The Decree

directed that an oral contract in which the deceased allegedly agreed to make a will to the plaintiff, leaving all his estate to her, be specifically enforced.

JUDGMENT AND OPINION OF THE COURTS BELOW

1. The opinion of the Appellate Court of Illinois, First District, was rendered on June 22, 1966, and became final on July 18, 1966, when the Appellate Court denied defendant petitioner's petition for a rehearing. The opinion is set forth as an appendix to this petition. Defendant's petition to the Supreme Court of Illinois, for leave to appeal was denied December 1, 1966. And this petition for writ of certiorari is filed within 90 days of that date.

The Opinion of the Illinois Appellate Court and certified copy of the order of the Illinois Supreme Court denying leave to appeal as set forth in the Appendix hereto.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 U.S. Code Section 1257 (3) (Judiciary and judicial Procedure, Title 28 Chap. 646 Public Law 773, 80th Congress). This petition is filed within 90 days of date of denial of leave to appeal by Illinois Supreme Court.

QUESTIONS PRESENTED FOR REVIEW

1. When a Testator makes a Will, which on its face purports to be only a gratutious gift of his estate to a particular Legatee and Devisee, and later revokes that Will, is it not a violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, for a Chancery Court, after the death of the testator to enter a decree, based solely on oral testimony that the revoked will was based on an oral contract to make a will and thereby irrevocable?

2. Even if a person should make an oral promise or agreement to make a will leaving his entire estate to a housekeeper in exchange for domestic services as a housekeeper, can the promisor, under the "Due Process of Law" clause of the Fifth Amendment and the "Equal Protection of the Laws" clause of the Fourteenth Amendment to the Constitution of the United States be prevented or enjoined from terminating said oral agreement during his lifetime, regardless of changed circumstances or dissatisfaction with the conduct, performance of the housekeeper promisee and notwithstanding the total lack of reciprocity and the inability of the Courts to constitutionally enforce or compel involuntary servitude performance by the housekeeper promisee who is constitutionally free to discontinue or terminate said oral agreement whenever she desires to do so?

STATEMENT OF THE CASE

Emma Chabot, filed her complaint in the Superior Court of Cook County to enforce an alleged oral contract with George H. Shannon, Deceased, to make a will naming her his sole legatee and Devisee. The petitioner herein, Timothy D. Kelly, administrator with the Will annexed of the Estate of George H. Shannon, Deceased, as legatee and devisee under the last Will and Testament of George H. Shannon, Deceased, was named as defendant.

She alleged that while a roomer in a rooming house owned and operated by George H. Shannon, Deceased, that he told her, (Plaintiff in the Court below) that he desired to obtain property located at 27 West Superior Street, Chicago, Illinois, furnish rooms and operate the premises as a rooming house, and that if plaintiff would advance money to him for that purpose and assist him

in the operation of the premises as a rooming house, he would furnish her with board, room and clothing and leave all his property to her upon his death.

The complaint further alleged that she advanced money to Shannon for that purpose and that from August 1943 until June 1948, she operated and managed Shannon's Rooming House at 750 North Dearborn Street, until he sold that property; that from August 1943 until June 1948, she managed and operated the rooming house located at 27 West Superior Street, Chicago, Illinois.

Mrs. Chabot alleged that Shannon complied with the alleged agreement by continuing to furnish and give her board, room and clothing. That on January 22, 1944, Shannon executed and delivered to her his Last Will and Testament in which she was appointed executor and made his sole legatee and Devisee. The Will which was attached to the complaint as an exhibit and made a part of the complaint, made no reference to any oral contract or promise.

Mrs. Chabot further alleged in her complaint that June 1948 Shannon breached his alleged contract by refusing to further furnish her with room, board and clothing, threatened her with bodily harm forcing her to move away from the premises at 27 West Superior Street, Chicago, Illinois; made another Last Will and Testament, revoking the first Will, that had named her as sole legatee and devisee, thereby leaving his entire estate to the petitioner herein, Timothy D. Kelly, Administrator.

On May, 1948, Mrs. Chabot filed a law suit against Shannon asking Twenty Thousand ($20,000.00) Dollars Damages. On December 4, 1948, Shannon died, and his

Will was filed for Probate on December 8, 1948, in the Probate Court of Cook County, Illinois. Mrs. Chabot did not file the revoked Will in the said Probate Court, but did file a claim against the estate for alleged back wages; said claim being filed on April 1, 1950.

Mrs. Chabot alleged she had advanced a total of Thirty Six Hundred ($3600.00) Dollars which had not been repaid, and that the books and records in which she had recorded said loan had been left with Shannon when she was forced to leave premises and the receipts for said loans had been lost when a purse snatcher had snatched her purse on a public street. She testified that Shannon on numerous occasions had asked her to marry him and often referred to her as maintaining a home for both of them.

In addition to her own testimony (over objections) Mrs. Chabot's son and other witnesses gave oral testimony that Shannon had told them that Mrs. Chabot had advanced money to him in the Rooming House business, that they were partners in said business and that he had made a will to protect her if anything happened to him.

The petitioner, Timothy D. Kelly, administrator with the Will Annexed etc. as defendant, in the Court below, denied the principle allegations of the Complaint and moved to strike and dismiss the Complaint on the ground that (a) The action was barred by the statute of frauds, (b) That there was an adequate remedy at law and that Mrs. Chabot had recognized and elected the remedy at law by filing a lawsuit against Shannon for alleged lost wages, before his death, and filing a claim for money damages against his estate. This motion was denied.

The Illinois Appellate Court, First Division, affirmed the Decree of the Superior Court of Cook County, Illinois vesting the entire estate of George H. Shannon, Deceased, in the plaintiff, in the Court below, Emma Chabot, and directed petitioner herein to execute all instruments necessary to transfer the entire said estate to her and make a full accounting of rents, issues and profits to Mrs. Chabot. The Illinois Supreme Court denied leave to appeal December 1, 1966, before an answer had been filed to the petition for leave to appeal.

REASONS FOR THE ALLOWANCE OF WRIT OF CERTIORARI

Petitioner's application for a writ, and the importance of this case is that it presents important and fundamental constitutional questions that go to the very heart and essence of the "Due Process of Law" Clauses of the Fifth (5th) and the "Equal Protection of the laws" clauses of the Fourteenth (14th) Amendment to the Constitution of the United States, which has not been, but should be settled by this Court, that is whether a person, who may have made an oral agreement to leave his entire estate to a housekeeper, in exchange for housekeeping services, can be constitutionally prevented or enjoined, by orders of a State Court from revoking or terminating said oral agreement during his lifetime, notwithstanding the total lack of reciprocity, in that, due to constitutional prohibition against involuntary servitude, of the 13th Amendment, the housekeeper cannot be ordered to specifically perform, or prevented or enjoined from revoking or terminating the said oral agreement anytime she elects to do so?

2. When a Testator revokes a will leaving all of his estate to a housekeeper and the housekeeper with notice of revocation, the housekeeper files suit against said testator, during his lifetime for money damages for alleged breach of an oral agreement, the testator dies before this suit has proceeded to judgment and a claim is filed against his estate for money payment, by the housekeeper, it is not a violation of the "Due Process of Law" clause of the 5th Amendment to the Constitution of the United States for a State Court of Chancery, after the death of said testator, to assume jurisdiction and order specific performance of alleged oral agreement thereby transferring

the entire estate of deceased testator over to said former housekeeper?

3. This Court should issue its writ in order to review this case and upon a review, to determine the issues in favor of the petitioner for the purpose of setting out some clear guidelines for the protection of the estates of deceased persons from confiscation by spurious claims of alleged oral promises to make a will, and the clarification of the inherent injustice and denial of the equal protection of the laws as guaranteed by the Fourteenth (14th) Amendment to the Constitution of the United States of any Court Decree that an oral agreement to make a will is irrevocable and binding even during the lifetime of the testator while the other party to the said oral agreement (housekeeper) is constitutionally free to rescind, abandon, breach or terminate the same oral agreement anytime she elects to do so because of the prohibition of the Thirteenth (13th) Amendment to the Constitution of the United States against involuntary servitude.

PRAYER

Wherefore your petitioner prays that this Court issue its Writ of Certiorari directed to the Supreme Court of the State of Illinois to the end that this cause may be reviewed and determined by this Court; and that such judgment affirmed by the Illinois Appellate Court, First District, and leave to appeal denied by the Illinois Appellate Court, First District, and leave to appeal denied by the Illinois Supreme Court, be reversed by this Court.

Respectfully submitted,

TIMOTHY D. KELLY, *Administrator with the Will Annexed, etc. Petitioner*

DAVID S. MINOR, *Attorney for Petitioner*

ARGUMENT

I.

The inhibitions of the Fourteenth (14th) Amendment include all departments of State Government; the judicial as well as the political.

"The equal protection of the laws is something more than an abstract right, it is a command which the State must respect and benefits of which every person may demand." *Hill* v. *Texas,* 62 S. Ct. 1159.

First and foremost the case at bar is somewhat unique and different from the traditional flood of claims of housekeepers of oral promises to make a will leaving the entire estate of the owner in exchange for housekeeping services, without pay, during the life of the alleged promisor. In the usual and customary "housekeeper cases" where an oral contract to make a will is alleged upon the death of the Testator, the alleged oral contract has been fully executed, in that the housekeeper has satisfactorily performed the agreed services until the death of the purported testator, which takes the oral contract out of the statute of Fraud and can be a defense to lack of mutuality, because the alleged oral agreement has been fully executed.

In the case at bar, the alleged oral contract to make a will was never fully executed by the housekeeper, Emma Chabot: Plaintiff's decedent, George H. Shannon Expressly Revoked, Rescinded And Terminated The Alleged Oral Contract To Make A Will During His Lifetime, made another will, leaving his entire estate to the petitioner, revoking the will previously drawn, leaving his

estate to the housekeeper, Mrs. Chabot, DISCHARGED Her As Housekeeper and evicted her from the premises. The Respondent herein, Mrs. Chabot then brought suit for money damages, for alleging breach of an alleged oral agreement, against George H. Shannon During His Lifetime.

Therefore, when after the death of plaintiff's decedent, George H. Shannon, the Superior Court of Cook County decreed specific performance of the alleged oral agreement to make a will, and ordered the petitioner herein as the administrator also Legatee and Devisee of the Will of George H. Shannon to transfer the entire estate of the said deceased testator to the Respondent, the Court had in fact set out an unprecedented and revolutionary doctrine that an oral agreement to make a will in consideration of housekeeping services automatically becomes IRREVOCABLE for the promisor During His Lifetime, notwithstanding that the alleged oral contract has not been fully executed, notwithstanding the provisions of the Statute of Frauds, and notwithstanding the total lack of mutuality (which is basic to the law of contracts), in that the Court cannot constitutionally decree specific performance on the part of the housekeeper because of the prohibitions of the Thirteenth (13th) Amendment to the Federal Constitution against involuntary servitude, and who therefore can rescind or terminate the same alleged oral contract anytime she elects to do so.

This decree, affirmed by the Appellate Court of Illinois, First District and leave to appeal denied by the Supreme Court of Illinois is a direct denial of the Equal Protection of the Laws as guaranteed and made mandatory by the Fourteenth (14th) Amendment to the Constitution of the United States: The law in Illinois by a virtual unanimity of cases is that mutuality is essential to the validity of a contract and that a contract will not be

enforced unless it is mutually enforceable and binding on both parties.

Keefer v. *United Elec. Coal Co.*, 292 Ill. App. 36 holds, "Where a contract is incapable of being enforced against one party, that party is equally incapable of enforcing it against the other."

Kinsey Distilling Sales Co. v. *Foremost Liquor Store, Inc.*, 15 Ill. 2d 182 holds, "Each party must be bound or neither is bound."

Welsh v. *Jakstas*, 401 Ill. 288 holds: "Contract will not be enforced unless it is mutually binding upon both parties."

The Fair v. *Estate Stone Co.*, 246 Ill. App. 558, holds, "In a bilateral agreement both promises must be binding or neither is binding."

The above cited cases and others too numerous to mention make is abundantly clear that to hold that an oral agreement to make a will in consideration of housekeeping services is irrevocable and decree specific performance for petitioner's decedent, George H. Shannon, which is constitutionally incapable of being enforced against the housekeeper is so clearly a denial of the Equal Protection of the Laws of Illinois as to not admit of serious argument.

II.

In affirming the Decree of the Superior Court of Cook County, the Illinois Appellate Court, and the Illinois Supreme Court in denying leave to appeal, overlooked or ignored petitioner's defense, that the alleged oral promise to make a will was barred by the Statute of Frauds (Ch. 59, Illinois Revised Statutes) notwithstanding that the defense first raised in the trial court below and on appeal

that respondent sought to enforce an alleged oral promise unenforceable under the statute of Frauds, supported by applicable decisions of the Illinois Supreme and Appellate Courts.

As heretofore pointed out that the alleged oral agreement had not been fully performed or executed, since by the respondent's own admission in her pleadings and briefs in the trial and Appellate Court, her alleged housekeeping services extended beyond one year, and the petitioner's decedent, George H. Shannon rescinded and terminated the alleged oral agreement, discharged her as housekeeper and evicted her from the premises During His Lifetime, which he without question legally can do subject only to claim or suit for damages, which the respondent did do during his lifetime and filed claim for alleged back pay against his estate after his death.

Oakes v. *Chicago Fine Brick Co.,* 311 Ill. App. 111 holds, "The Illinois Statute of Frauds is substantive in nature, not remedial, and affects the validity of the contract."

Mladich v. *McEneely,* 212 Ill. App. 435 holds, "It is the function of the Statute of Frauds to prevent certain unwritten agreements from being legally binding."

The Statute of Frauds further provides that everything that affects the title to real estate shall be in writing, signed by the party to be charged.

Cabridge v. *Westminister Presbyterian Church and Society,* 18 Ill. App. 2d 245 holds, "Policy of the law requires that everything which affects the title of real estate shall be in writing and that nothing shall be left to the frailty of human memory or as a temptation to perjury."

Clearly the fact that the decedent, George H. Shannon made a will in behalf of the respondent, later revoked, is not and cannot be interpreted even as evidence of an oral contract to make a will, as claimed by respondent in the trial court and inferred by the Decree of trial Court. The said will On Its Face purported to be nothing more than a gratuitous gift of the testator's property to the respondent, nor was there anything on the face of said will that could be interpreted as evidence of the existence of an oral contract to make a will. In fact, one of the respondent's witnesses, Mrs. Jetley testified, "that they (respondent, Mrs. Chabot and Mr. Shannon) were supposed to be engaged, in other words she was his fiancée." (Abs. 84) Therefore, said will, later revoked was not a sufficient writing or memorandum within terms of Statute of Frauds.

In *Hols* v. *Stephens,* 362 Ill. App. 2d 245, the Illinois Supreme Court held, "a deed executed in pursuant to an oral agreement, without any reference therein to the terms of the contract, is not a sufficient note or memorandum to take the transaction out of the statute."

In *Frese* v. *Meyer,* 392 Ill. 59 it was held "we have held that mutual wills generally are not of themselves proof of the contract and consideration to support it must be made Aliunde."

In *Corcoran* v. *Williams,* 271 Ill. App. 312, 316: holds the writing (alleged newly discovered will) may be tangible evidence of a desire of the intestate to give his sister Anna his entire estate, but it cannot be said that it is so decisive and conclusive as to justify a decree for specific performance."

In *Monsen* v. *Monsen,* 174 Cal. 97, it was held, "that the making of a will has no tendency to show that there is a contractual obligation to make such a will."

As was said in *Rodman* v. *Rodman,* 112 Wis. 378, "it is a matter of common knowledge and experience that while wills are frequently made, contracts to make a will a certain way are very infrequent."

In the case at bar, the trial court over objection of petitioner admitted the said revoked will in favor of respondent as evidence of an oral contract to make a will. All of the foregoing points and authorities cited were presented for review to the Illinois Appellate Court and to the Supreme Court of Illinois in petition for leave to appeal. The Illinois Appellate Court overlooked or disregarded same and completely omitted any reference or mention of these and other points or authorities, in its opinion, and the petition to the Supreme Court for leave to appeal to correct said opinion of the Appellate Court which was in conflict with said applicable decision, also overlooked or disregarded same.

The petitioner herein respectfully submits that to deny him the same protection that the above cited cases and others too numerous to mention afforded others, similarly situated is a clear denial of the equal protection of the laws as guaranteed by the Fourteenth (14th) Amendment to the Constitution of the United States.

III.

For a Court of Equity to Decree specific performance where there is an adequate remedy at law is a denial of both due process of law and the equal protection of the laws as guaranteed by the Fifth (5th) and Fourteenth (14th) Amendment to the Constitution of the United States. Traditionally by established procedure, practice and law, as set out by stare decisis, a Court of Chancery does not have jurisdiction of a case where there is an adequate remedy at law.

In the case at bar, the respondent alleged that she performed services as a housekeeper and advanced the decedent $3,600.00 of which she had no evidence except her oral testimony and the testimony of her witnesses that Shannon had told them the respondent had "loaned" him some money. The respondent testified that Shannon, the decedent, furnished her with room, board (food) and clothes.

The Appellate Court, in its opinion stated that proper compensation for Mrs. Chabot's services as a housekeeper and manager of the rooming house, in addition to her room and board is difficult to compute. This is indeed a startling statement. Tenants in the rooming house were paying rent and thus the value of Mrs. Chabot's room could easily be established. Almost any housewife or operator of a boarding house (of which there are many in Chicago) could establish the reasonable value of three meals a day which Mrs. Chabot obtained. These two items should be deducted from the value of her services, which can easily be established by the testimony of the owner or manager of an employment agency specializing in the hiring of domestic and similar employment. After all, there is nothing unique or unusual about the position of a housekeeper or maid in private homes or the usual salary for such services, in addition to room and board. In fact, one of Mrs. Chabot's own witnesses, Ida N. Jetley, testified that she told Shannon that Mrs. Chabot should have her rent and at least $100.00 a month. (Abs. 87) Further the respondent herself elected to pursue her remedy at law by filing suit against Shannon during his lifetime for money damages for alleged breach of alleged oral contract to make a will and filed claim against his estate after his death.

In 69 A.S.R. 201 the following statement is made, "The lure of a legacy is often held out to attract attention and services. Personal attention and service are often assiduously rendered in hope of a legacy. In such case, however, if property is transferred or service is rendered upon the understanding that compensation is to be rendered therefor by a legacy or devise, the value of what has been so supplied is generally recoverable in an action at law. If from all the circumstances, it is manifest, that it was mutually understood that compensation should be made by will and none is made, an action lies to recover the value of the services.

In *Greenwood* v. *Com. Nat. Bank of Peoria,* 7 Ill. 2d 436, 439, the Illinois Supreme Court observed "(3) The contract may be based upon services, support and care, and if the value of such services may be estimated in money, or for which a recovery might be had, such performance will not take the contract out of the Statute of Frauds except where the Statute of Limitations bars recovery, or where the services cannot be adequately compensated.

Therefore the decree of the trial Court for specific performance notwithstanding an adequate remedy at law which the respondent herself in fact pursued during the life of Shannon and against his estate after his death, was a clear denial of due process of law and the equal protection of the laws as guaranteed by the 5th and 14th Amendment to the Constitution of the United States.

CONCLUSION

Because the Decree for specific performance as affirmed in fact holding that an oral promise to make a will is irrevocable even during the life of the promisor, notwithstanding the total lack of mutuality and that a decree of specific performance is constitutionally incapable of being applied to the promisee notwithstanding an adequate remedy at law and notwithstanding the provisions of the Statutes of Frauds, sets an unprecedented and dangerous precedent and unless settled by this Court is almost certain to lead to such widespread abuses, attempted frauds and conspiracies to defraud the estates of deceased persons, in reliance on the decision and doctrine established by decision and opinion in this case that would be certain to require repudiation by this Court in the future.

The particular points raised have never been decided upon by this Court and should be corrected by this Court and because of the foregoing, the importance of this case requires that this Court grant its Writ of Certiorari to the Supreme Court of Illinois and that upon a hearing of the issues make its decision known.

Respectfully submitted,

TIMOTHY D. KELLY, *Administrator with the will Annexed, etc., Petitioner Pro Se*

By DAVID S. MINOR,
7 W. Madison Street
Chicago, Illinois
Attorney for Petitioner